

March 7, 1995

TRANSMITTAL CIRCULAR 90-11--1990 LOOSELEAF EDITION  
FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATION

Contents

- Item I                   Amendment 4--Amendment of FIRMR to remove provisions  
                          for using GSA nonmandatory schedule contracts for FIP  
                          resources
- Item II                  Appendix C, List of Current Issuances--Updated  
                          pages

Explanations

Item I                   **SUMMARY:** This rule revises Federal Information  
(Amdt. IV)               Resources Management Regulation (FIRMR) provisions  
                          regarding Federal Information Processing (FIP)  
                          multiple award schedule (MAS) contract orders.  
                          Specifically, the rule removes the requirement to  
                          synopsise orders in excess of \$50,000 placed against  
                          MAS contracts and incorporates the new \$2,500  
                          "micro-purchase" threshold. These changes  
                          are examples of GSA's ongoing efforts to improve the  
                          MAS program and streamline the procurement process.  
                          GSA strongly encourages agencies to use the schedules  
                          program as a proven method to purchase commercial  
                          goods in a manner that is both time and cost  
                          effective.

**EFFECTIVE DATE:** This rule is effective  
March 29, 1995

**SUPPLEMENTARY INFORMATION:** (1) A notice of proposed  
rulemaking was published in the FEDERAL REGISTER on  
February 23, 1994. This notice removed all  
provisions for using GSA nonmandatory schedule  
contracts for FIP resources from the FIRMR.  
Thirty-four (34) comments were received on the  
proposed rule. All comments were considered, and,  
where possible, incorporated into the final rule.  
Several respondents requested that the FIP MAS  
procedures remain in the FIRMR.

(2) This rule removes the FIRMR requirement that  
agencies synopsise orders valued at \$50,000 or higher

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that are placed against FIP MAS contracts. This change will speed up the MAS ordering process, reduce the amount of effort agencies put into small acquisitions under the MAS program, and allow agency procurement shops to focus more of their time on the larger more complex open market buys. Below the \$2,500 threshold agencies are not required to consider other MAS contracts. Above \$2,500, agencies must consider reasonably available information about products offered under MAS contracts to ensure that the selection meets the agency's needs at the lowest overall cost. The guiding principles also reflect that MAS contractors no longer are required to pass on a price reduction extended to only one agency for a specific order to all MAS users.

(3) Explanation of the specific changes being made by this issuance are shown below:

(a) Subpart 201-39.5 is removed to delete the synopsisizing requirements related to the FIP MAS contracts.

(b) Section 201-39.601-2 is removed since synopsisizing is no longer required.

(c) Section 201-39.803-3 is revised to streamline and simplify the procedures for using the FIP MAS contracts.

(d) The FIRM Index reference is revised to change the phrase "GSA nonmandatory schedule contract" to "GSA nonmandatory FIP schedule contract" to differentiate the FIP MAS contracts from the newly nonmandatory FSS MAS contract programs.

Item II      Action: This page updates the list of current  
(App. C)      FIRM issuances. Specifically, Section  
                 C is updated to reflect the issuance of  
                 Amendment 4.

Filing Instructions

Items I thru II      Remove existing pages and insert revised  
or replacement pages in accordance with the  
following instructions:

<u>In</u>	<u>Remove Pages</u>	<u>Insert pages</u>
Part 201-39	i-ii   and 39-4 thru 39-16	i-ii   and 39-4 thru 39-16
Appendix C	C-1	C-1

**NOTE.**--Pages listing FIRMR PARTS 201-39.3304-4 through FIRMR  
Part 201-39.5200-2 were inadvertently omitted from Transmittal  
Circular 90-10. These pages are included in Transmittal Circular  
90-11

**PEN AND INK CHANGE**

The reference to "GSA nonmandatory schedule contract" in the FIRMR  
Index is revised to "GSA nonmandatory FIP schedule contract."

Point of Contact. Questions concerning your agency's distribution of  
Transmittal Circulars or the FIRMR should be directed to your agency's  
GPO Liaison Officer. If additional assistance is needed, please  
contact Howard Boddie, Regulations Analysis Division (KAR), telephone,  
commercial (202) 501-3194 (v) or (202) 501-0657 (tdd).



FRED L. SIMS  
Deputy Assistant Commissioner  
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Management Policy



**SUBCHAPTER D—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP)  
RESOURCES BY CONTRACTING**

**PART 201-39—ACQUISITION OF FEDERAL  
INFORMATION PROCESSING (FIP)  
RESOURCES BY CONTRACTING**

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**§ 201-39.106-3**

**§ 201-39.103 [Reserved]**

**§ 201-39.104 Deviations.**

**§ 201-39.104-1 Deviations from the FIRM.**

(a) *Policy.* Unless precluded by law, executive order, or regulation, GSA may grant deviations, as defined in subpart 201-39.2, from part 201-39 when necessary to meet the specific needs and requirements of each agency. Class deviations (affecting more than one contract action) and individual deviations (affecting only one contract action) may be authorized by—

(1) The Commissioner, Information Resources Management Service, or

(2) The officials designated by the Commissioner for that purpose.

(b) *Procedures.*

(1) The agency head (or a designee) shall prescribe procedures for processing deviation requests.

(2) Each request for deviation shall explain the nature of and the reasons for the deviation.

(3) Agencies shall forward requests for deviations to: General Services Administration, Regulations Analysis Division (KAR), 18th & F Streets, NW, Washington, DC 20405.

**§ 201-39.104-2 Deviations from the FAR.**

Deviations from the FAR shall be accomplished in accordance with FAR subpart 1.4.

**§ 201-39.105 [Reserved]**

**§ 201-39.106 Contracting authority and responsibilities.**

**§ 201-39.106-1 General.**

(a) Notwithstanding FAR 1.601, authority and responsibility to contract for FIP resources is vested in the Administrator of General Services unless an exception in 40 U.S.C. 759(a)(3) applies. The Administrator of General Services, or a designee, authorizes agencies to contract for FIP resources by granting a delegation of procurement authority (DPA) to the agency designated senior official (DSO) when GSA determines that the DSO is sufficiently independent of program responsibility and has sufficient experience, resources, and ability to fairly and effectively carry out procurements under GSA's authority. Such delegations are granted by one of the following methods:

(1) The regulatory delegation of GSA's exclusive procurement authority which allows Federal agencies to contract for certain types of FIP resources up to specified dollar amounts without obtaining a specific DPA;

(2) A specific agency delegation of GSA's exclusive procurement authority whereby the GSA Commissioner for Information Resources Management or a designee may authorize changes in the regulatory DPA for individual Federal agencies (or components thereof) on the basis of their ability to acquire, manage, and use FIP resources in accordance with FIRM policies and procedures; or

(3) A specific acquisition delegation of GSA's exclusive procurement authority provided to the agency as a result of the submission of an agency procurement request (APR) to GSA when acquisitions are not covered by either the regulatory or a specific agency DPA.

(b) The agency's DSO may redelegate GSA's exclusive authorities for FIP resources to qualified officials. However, such redelegation does not relieve the DSO of the responsibilities under 44 U.S.C. 3506 for the conduct of and accountability for acquisitions of FIP resources made under a DPA from GSA.

(c) Only a contracting officer may enter into and sign a contract on behalf of the Government. A DPA from GSA does not make the DSO a contracting officer. Contracting officers are appointed under procedures established by agency heads under FAR subpart 1.6.

(d) Additional policies and procedures related to delegations of procurement authority are addressed in part 201-20.

**§ 201-39.106-2 Policy.**

Before contracting for FIP resources, the contracting officer shall ensure that the agency's DSO has redelegated GSA's procurement authority to the contracting officer.

**§ 201-39.106-3 Procedures.**

The contracting officer shall consider this § 201-39.106, agency directives, and written instructions to the contracting officer issued under FAR 1.602-1 to ensure that the contracting officer is authorized to make the award.

**§ 201-39.106-4 Contract clause.**

(a) All solicitations and contracts for FIP resources subject to the FIRMR shall contain a clause identifying whether the contracting action is being conducted under the regulatory DPA, a specific agency DPA, or a specific acquisition DPA.

(b) If the contracting action is being conducted under a specific agency or specific acquisition DPA, the contract clause shall also include the GSA case number of the specific DPA.

(c) Accordingly, the contracting officer shall—

(1) Insert a clause substantially the same as the clause at § 201-39.5202-3, Procurement Authority, in each solicitation and contract for FIP resources; and

(2) Promptly issue an amendment to the solicitation modifying this clause if any of the facts set forth in it change prior to contract award.

**Subpart 201-39.2—Definitions of Words and Terms****§ 201-39.200 Scope of subpart.**

This subpart defines words and terms used in part 201-39.

**§ 201-39.201 Definitions.**

**Designated senior official (DSO)** means—

(a) The senior official designated by executive agencies pursuant to the Paperwork Reduction Act to be responsible for carrying out the agency's IRM functions (see 44 U.S.C. 3506); or

(b) The senior IRM official designated by the agency head for Federal agencies not subject to the Paperwork Reduction Act to be responsible for acquisitions of FIP resources made pursuant to a DPA.

**Deviation** means any one or a combination of the following:

(a) The issuance or use of a policy, procedure, practice, solicitation provision, contract clause, or method pertaining to the acquisition, management or use of Federal information processing resources that is inconsistent with the FIRMR.

(b) The omission or modification of any policy, procedure, practice, solicitation provision or contract clause required by the FIRMR.

(c) The authorization of lesser or greater limitations on the delegation, use, or application of any policy, procedure, solicitation provision, or contract clause prescribed by the FIRMR, except that this does not preclude an agency from setting delegation thresholds at more restrictive levels than those established by the FIRMR.

**Federal information processing (FIP) resources** means automatic data processing equipment (ADPE) as defined in Public Law 99-500 (40 U.S.C. 759(a)(2)), and set out in paragraphs (a) and (b) of this definition.

(a) Any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information—

(1) by a Federal agency, or

(2) under a contract with a Federal agency which—

(i) requires the use of such equipment, or

(ii) requires the performance of a service or the furnishing of a product which is performed or produced making significant use of such equipment.

(b) Such term includes—

(1) computers;

(2) ancillary equipment;

(3) software, firmware, and similar procedures;

(4) services, including support services; and

(5) related resources as defined by regulations issued by the Administrator for General Services.

(c) The term, FIP resources, includes FIP equipment, software, services, support services, maintenance, related supplies, and systems. These terms are limited by paragraphs (a) and (b) of the definition of FIP resources and are defined as follows:

(d) **FIP equipment** means any equipment or interconnected system or subsystems of equipment used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(e) **FIP maintenance** means those examination, testing, repair, or part

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replacement functions performed on FIP equipment or software.

(f) **FIP related supplies** means any consumable item designed specifically for use with FIP equipment, software, services, or support services.

(g) **FIP services** means any service, other than FIP support services, performed or furnished by using FIP equipment or software.

(h) **FIP software** means any software, including firmware, specifically designed to make use of and extend the capabilities of FIP equipment.

(i) **FIP support services** means any commercial nonpersonal services, including FIP maintenance, used in support of FIP equipment, software, or services.

(j) **FIP system** means any organized combination of FIP equipment, software, services, support services, or related supplies.

**Lowest overall cost** means the least expenditure of funds over the system life, price and other factors considered, including, but not necessarily limited to—

- (a) Prices for the FIP resources;
- (b) The present value adjustment, if used; and
- (c) The identifiable and quantifiable costs—
  - (1) Directly related to the acquisition and use of the FIP resources;
  - (2) Of conducting the contract action; and
  - (3) Of other administrative efforts directly related to the acquisition process.

**Most advantageous alternative** means the alternative that provides the greatest value to the Government over the system life in terms of price or cost, quality, performance, and any other relevant factors.

**Outdated FIP equipment** means any FIP equipment over eight years old, based on the initial commercial installation date of that model of equipment, and that is no longer in current production.

**Radar equipment** means any radio detection device that provides information on range, azimuth, or elevation of objects.

**Radio equipment** means any equipment or interconnected system or subsystem of equipment (both transmission and reception) that is used to communicate over a distance by modulating and radiating electromagnetic

waves in space without artificial guide.

This does not include such items as microwave, satellite, or cellular telephone equipment.

**Sonar equipment** means an apparatus that detects the presence and location of a submerged object by means of sonic, subsonic, or supersonic waves reflected back to it from the object.

**Specific make and model specification** means a description of the Government's requirement for FIP resources that is so restrictive that only a particular manufacturer's products will satisfy the Government's needs, regardless of the number of suppliers that may be able to furnish that manufacturer's products.

**System life** means a projection of the time period that begins with the installation of the FIP resource and ends when the agency's need for that resource has terminated.

**Television equipment** means any equipment (both transmission and reception) used for the conversion of transient visual images into electrical signals that can be transmitted by radio or wire to distant receivers where the signals can be reconverted to the original visual images. This does not include such items as monitors for computers or computer terminals or video conferencing equipment.

**Subparts 201-39.3 and 201-39.4  
[Reserved]**

**Subpart 201-39.5—[Reserved]**

**Subpart 201-39.6—Competition  
Requirements**

**§ 201-39.600 Scope of subpart.**

This subpart prescribes policies and procedures applicable to—

- (a) The acquisition of FIP resources using specific make and model specifications; and
- (b) The use of follow-on contracts to perpetuate outdated FIP equipment.

**§ 201-39.601 Specific make and model specifications.**

**§ 201-39.601-1 Policy.**

An acquisition that uses a specific make and model specification does not provide for full and open competition and must be

justified and approved in accordance with FAR 6.303 and 6.304.

**§ 201-39.601-2 [Reserved]**

**§ 201-39.601-3 Authority.**

When the FIP resources required to meet the needs of an agency can be satisfied only through the use of a specific make and model specification, the statutory authority to be cited in FAR 6.303-2(a)(4), in lieu of any statutory authority cited in accordance with FAR 6.302, is: 40 U.S.C. 759(g), as amended.

**§ 201-39.602 Outdated FIP equipment.**

**§ 201-39.602-1 Policy.**

The justification requirements of FAR 6.302-1(a)(2)(ii) shall not be used to perpetuate any contract for outdated FIP equipment or for FIP equipment to be used with FIP software that requires general redesign to satisfy mission needs.

**§ 201-39.602-2 Exception.**

An exception to § 201-39.602-1 may be invoked if the agency's DSO determines that such action will be in the Government's best interest.

**Subpart 201-39.7—[Reserved]**

**Subpart 201-39.8—Required Sources of Supplies and Services**

**§ 201-39.800 Scope of subpart.**

This subpart prescribes the policies and procedures applicable to the acquisition of FIP resources using GSA mandatory and nonmandatory sources of supply.

**§ 201-39.801 Ordering FIP resources from Federal Supply Schedules.**

**§ 201-39.801-1 General.**

GSA directs and manages both the Federal Supply Schedules program and the GSA nonmandatory schedule contracts for FIP resources. While most FIP resources available under these programs are covered by the GSA nonmandatory schedule contracts for FIP resources, the Federal Supply Schedules also contain some resources that fall within the definition of FIP resources. Use of the Federal Supply Schedules program is covered by FAR 8.4 and use of the GSA nonmandatory schedule contracts for FIP resources is covered by this subpart 201-39.8.

**§ 201-39.801-2 Policy.**

The procedures of FAR 8.4 shall be followed when an order for FIP resources is placed against a GSA Federal Supply Schedule.

**§ 201-39.802 Purchase of Telecommunications services (POTS) contracts.**

**§ 201-39.802-1 General.**

(a) GSA has established nonmandatory POTS contracts to provide an optional source for telecommunications supplies and services, including purchase, installation, maintenance, repair, de-installation, and relocation of both contractor-provided and Government-owned telephone equipment, at locations throughout the country.

(b) The POTS contracts are available for use by all Federal agencies.

(c) Federal agencies may obtain information and assistance concerning the use of POTS contracts from: GSA, Technical Contract Management Division (KVT), 18th and F Streets, NW., Washington, DC 20405.

**§ 201-39.802-2 Policies.**

(a) Federal agencies may use POTS contracts when the requirement are within the scope of the POTS contracts.

(b) Use of the POTS contracts is a competitive procedure.

(c) Orders issued under a POTS contract are not subject to the publication requirements in FAR Part 5.

**§ 201-39.802-3 Procedures.**

Procedures for using the POTS program are contained in FIRMR Bulletin C-21.

**§ 201-39.803 GSA nonmandatory schedule contracts for FIP resources.**

**§ 201-39.803-1 General.**

(a) GSA nonmandatory schedule contracts for FIP resources, managed by GSA's Information Resources Management Service, provide Federal agencies with a simplified process for obtaining these resources. GSA awards such contracts to many different vendors and each contract establishes terms, conditions, and prices for stated periods of time. These contracts are not part of the Federal Supply Service (FSS) Schedule program covered in FAR subpart 8.4 and they are not mandatory sources of supply.

(b) Agencies should use GSA nonmandatory schedule contracts for FIP

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resources when the contracting officer determines that placing an order under a GSA nonmandatory schedule contract would result in a lower overall cost than other contracting methods, such as issuing a solicitation, using small purchase procedures, using a nonmandatory agency contract, or using other nonmandatory GSA programs.

**§ 201-39.803-2 Policy.**

Use of GSA nonmandatory schedule contracts is a competitive procedure when—

(a) It results in the lowest overall cost alternative to meet the needs of the Government; and

(b) The procedures of this section are followed.

**§ 201-39.803-3 Procedures.**

(a) Prior to selecting a GSA nonmandatory FIP schedule contract and placing an order, the agency shall justify any restrictive requirement (e.g., an “all or none” requirement or a requirement for “only new” equipment).

(b) Ordering activities can place orders of \$2,500 or less with any GSA nonmandatory FIP schedule contractor. GSA has already determined the prices of items under these contracts to be fair and reasonable.

(c) To reasonably ensure that a selection represents the best value and meets the agency’s needs at the lowest overall cost alternative, before placing a MAS order of more than \$2,500, an ordering activity should—

(1) Consider reasonably available information about products offered under Multiple Award Schedule contracts; this standard is met if the ordering activity does the following:

(i) Considers products and prices contained in any GSA MAS automated information system (e.g., Information Resources Management - On-line Schedules System); or

(ii) If automated information is not available, reviews at least three (3) price lists.

(2) In selecting the best value item at the lowest overall cost (the price of the item plus administrative costs), the ordering activity may consider such factors as—

(i) Special features of one item not provided by comparable items which are required in effective program performance;

(ii) Trade-in considerations;

(iii) Probable life of the item selected as compared with that of a comparable item;

(iv) Warranty conditions; and

(v) Maintenance availability.

(3) Give preference to the items of small business concerns when two or more items at the same delivered price will meet an ordering activity’s needs.

(d) MAS contractors will not be required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order. There may be circumstances where an ordering activity finds it advantageous to request a price reduction, such as where the ordering activity finds that a schedule product is available elsewhere at a lower price, or where the quantity of an individual order clearly indicates the potential for obtaining a reduced price.

(e) Ordering activities should document orders of \$2,500 or less by identifying the contractor the item was purchased from, the item purchased, and the amount paid. For orders over \$2,500, MAS ordering files should be documented in accordance with internal agency practices. Agencies are encouraged to keep documentation to a minimum.

(f) Requirements or orders shall not be fragmented in order to circumvent the applicable MOL.

**§ 201-39.804 Financial Management  
Systems Software (FMSS) Mandatory  
Multiple Award Schedule (MAS)  
Contracts Program.**

**§ 201-39.804-1 General.**

(a) The Office of Management and Budget (OMB) has established a Governmentwide financial management systems software program. To help agencies implement this program, GSA has established the mandatory FMSS MAS contracts program.

(b) Federal agencies may obtain information and assistance concerning the use of the FMSS MAS contracts program from: General Services Administration, ADP Systems Procurement Branch (KECP), FMSS Contracting Officer, 18th and F Streets, NW, Washington, DC 20405.

(c) OMB Circular No. A-127, “Financial Management Systems,” provides further policy direction regarding the FMSS program.

**§ 201-39.804-2 Policy.**

Executive agencies shall use the FMSS MAS contracts program for the acquisition of commercial software for primary accounting systems and for the acquisition of services

and support related to the implementation of such software.

**§ 201-39.804-3 Exceptions.**

(a) If an executive agency holds a licensing agreement for a software package that is available on the FMSS MAS contracts, and the package was obtained under a contract awarded before the award of the FMSS MAS contracts, the agency's use of the FMSS MAS contracts program is optional for the acquisition of services and support related to the implementation of that package until the previous non-MAS contract expires.

(b) Use of the FMSS MAS contracts program by Federal agencies that are not executive agencies is optional and is subject to the FMSS contractor accepting the order.

(c) An executive agency shall obtain a waiver from GSA if it determines that its requirements for financial management systems software cannot be satisfied through use of the FMSS MAS contracts program.

(1) The request for a waiver shall contain the following information:

(i) A description of the agency's requirements; (ii) The reasons the FMSS MAS contracts program does not satisfy the requirements; and

(iii) A description of how the agency proposes to satisfy its needs for financial management system software.

(2) Agencies shall send waiver requests to GSA at the address in § 201-39.804-1(b).

(3) If a waiver is obtained from GSA, a deviation from the FIRMR is not required.

**§ 201-39.804-4 Procedures.**

(a) The contracting officer shall announce the agency's requirements in a letter of interest (LOI) to all contractors participating in the FMSS MAS contracts program.

(b) At the time of issuance, the contracting officer shall provide a copy of the LOI to GSA at the address in § 201-39.804-1(b) and to OMB at the following address: Office of Management and Budget, Chief Financial Officer, 725 17th Street, NW, Room 10235, Washington, DC 20503.

(c) The LOI shall—

(1) Contain sufficient information to enable a competitive acquisition under the FMSS MAS contracts program;

(2) Include instructions to the FMSS MAS contractors for responding to the LOI; and

(3) Include evaluation and award factors.

(d) The agency shall conduct an analysis of the offerings of the FMSS MAS contractors and issue a delivery order to the contractor that provides the most advantageous alternative to the Government.

(e) The contracting officer may issue single or multiple delivery orders to satisfy the total requirement.

(f) The contracting officer shall provide a copy of each delivery order, or modification thereto, to OMB at the address shown in subparagraph (b) of this section and to GSA at the address in § 201-39.804-1(b).

**Subpart 201-39.9—[Reserved]**

**Subpart 201-39.10—Specifications, Standards, and other Purchase Descriptions**

**§ 201-39.1000 Scope of subpart.**

This subpart prescribes policies and procedures for using specifications, standards, and other purchase descriptions in acquiring FIP resources.

**§ 201-39.1001 Security and privacy specifications.**

**§ 201-39.1001-1 Security specifications.**

Specifications for security of FIP resources shall include, as appropriate:

(a) Agency rules of conduct that a contractor shall be required to follow.

(b) A list of the anticipated threats and hazards that the contractor must guard against.

(c) A description of the safeguards that the contractor must specifically provide.

(d) The security standards applicable to the contract.

(e) A description of the test methods, procedures, criteria, and inspection system necessary to verify and monitor the operation of the safeguards during contract performance and to discover and counter any new threats or hazards.

(f) A description of the procedures for

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periodically assessing the security risks involved.

(g) A description of the personnel security requirements.

(h) Consistent with the guidelines for Federal computer security training issued by the National Institute of Standards and Technology (NIST) and regulations issued by the Office of Personnel Management (OPM), a description of the security training that the contractor is required to provide to its employees.

(i) Consistent with the guidelines issued by the Office of Management and Budget (OMB) in OMB Bulletin 88-16, a description of the plan the contractor must develop or follow to provide for the security and privacy of FIP resources the contractor is required to operate.

**§ 201-39.1001-2 Privacy specifications.**

(a) *Applicability.* This subsection is applicable to executive agencies that are subject to the Privacy Act of 1974 (5 U.S.C. 552a).

(b) *Procedures.* Specifications for the design, development, or operation of a system of records using commercial FIP services or support services shall include the following:

(1) Agency rules of conduct that the contractor and the contractor's employees shall be required to follow.

(2) A list of the anticipated threats and hazards that the contractor must guard against.

(3) A description of the safeguards that the contractor must specifically provide.

(4) Requirements for a program of Government inspection during performance of the contract that will ensure the continued efficacy and efficiency of safeguards and the discovery and countering of new threats and hazards.

**§ 201-39.1001-3 Contract clause.**

The contracting officer shall insert a clause substantially the same as the clause at § 201-39.5202-5, Privacy or Security Safeguards, in solicitations and contracts—

(a) Requiring security of FIP resources.

(b) For the design, development, or operation of a system of records using commercial FIP services or support services.

**§ 201-39.1002 Federal standards.**

**§ 201-39.1002-1 General.**

GSA publishes a handbook titled "Federal ADP and Telecommunications Standards Index" providing guidance to agencies on the use of Federal standards. The index also provides optional terminology that may be used to incorporate standards in solicitations and a "Standards Checklist" that can be included in the solicitation to incorporate applicable Federal standards. Copies of the index can be purchased from: U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402.

**§ 201-39.1002-2 Policy.**

The contracting officer shall include in solicitations terminology to incorporate each standard that is applicable to the FIP resources being acquired.

**§ 201-39.1002-3 Procedures.**

The contracting officer shall use one or a combination of the following methods to implement standards in solicitations:

(a) Include in the solicitation the full text of the terminology contained in the index for each applicable standard.

(b) Incorporate in the solicitation the applicable terminology by reference to the index.

(c) For each applicable standard, include the full text of the terminology as developed by the agency.

**§ 201-39.1002-4 Solicitation provision.**

If any of the terminology to incorporate standards in solicitations is incorporated by reference, the contracting officer shall insert in the solicitation the provision at § 201-39.5202-2, Availability of the "Federal ADP and Telecommunications Standards Index."

**§ 201-39.1003 Specifications for outdated FIP equipment.**

The contracting officer shall not include specifications for outdated FIP equipment in a solicitation unless—

(a) The agency's DSO determines that such action will be in the Government's best interest; or

(b) A determination has been made in accordance with § 201-39.602

**Subparts 201-39.11 and 201-39.12  
[Reserved]**

## **Subpart 201-39.13—Small Purchase and Other Simplified Purchase Procedures**

### **§ 201-39.1300 Scope of subpart.**

This subpart prescribes policies and procedures for acquiring from commercial sources FIP resources whose aggregate amount does not exceed the small purchase threshold of FAR part 13.

### **§ 201-39.1301 Policy.**

When requirements for FIP resources are to be satisfied through the use of GSA sources of supply as set forth in subpart 201-39.8, the policies and procedures of FAR part 13 do not apply.

## **Subpart 201-39.14—Sealed Bidding**

### **§ 201-39.1400 Scope of subpart.**

This subpart prescribes policies and procedures governing contracting for FIP resources by sealed bidding.

### **§ 201-39.1401 General.**

This subpart requires the contracting officer to select the bid that is most advantageous to the Government considering options, acquisition methods, present value discount factors, and other price-related factors. Therefore, contracting officers should consider the factors associated with each acquisition of FIP resources in order to select the method of contracting that will best accommodate this requirement.

### **§ 201-39.1402 Price-related factors.**

#### **§ 201-39.1402-1 Policies.**

(a) In addition to the bid price for the basic and all optional quantities and contract periods and optional FIP resources; and the price-related factors set forth in FAR 14.201-8, sealed bid solicitations for FIP resources shall be structured to require consideration of the following factors, as applicable, in order to determine which bid is most advantageous to the Government.

(1) Support and in-house costs over the system life for installing, operating, and disposing, where quantifiable and when these costs may differ based on offers received.

(2) Any costs of conversion that can be stated in dollars, as well as other costs directly related to converting from installed to augmentation or replacement FIP resources. However, the costs associated with the following shall not be included:

(i) Conversion of existing software and data bases that are to be redesigned regardless of whether or not augmentation or replacement FIP resources are acquired. (ii) Purging duplicate or obsolete software, data bases, and files.

(iii) Development of documentation for existing application software.

(iv) Improvements in management and operating procedures.

(b) When payments are expected to vary among the alternatives being considered, or where payments will be made over an extended period, agencies should adjust prices and costs to present value and apply the results in source selection. Agencies should follow the guidance in OMB Circular A-94 regarding present value calculations.

### **§ 201-39.1402-2 Exception.**

Agencies are permitted to award on the basis of the lowest offered purchase price when—

(a) The only acquisition method to be used is purchase;

(b) The purchase price of each item being acquired does not exceed \$25,000; and

(c) The total purchase price of all the FIP resources to be included in the contract does not exceed \$300,000.

### **§ 201-39.1403 Solicitation.**

(a) The solicitation shall state the means of evaluating all acquisition methods included in the solicitation.

(b) If a present-value adjustment is to be used, the solicitation shall state the methodology and discount rate that will be applied in the evaluation process.

### **§ 201-39.1404 Award.**

The contracting officer shall not award a contract providing for the delivery of outdated FIP equipment unless—

(a) The agency's DSO determines that such action will be in the Government's best interest; or

(b) A determination has been made in

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accordance with § 201-39.602 or  
§ 201-39.1003.

**Subpart 201-39.15—Contracting  
By Negotiation**

**§ 201-39.1500 Scope of subpart.**

This subpart prescribes policies and procedures governing contracting for FIP resources by negotiation.

**§ 201-39.1501 Evaluation factors.**

**§ 201-39.1501-1 Policies.**

(a) In addition to the factors set forth in FAR 15.605, the contracting officer shall evaluate total cost, including the following factors:

(1) All prices for FIP resources including the basic and optional quantities, basic and optional contract periods, and optional FIP resources.

(2) Other support and in-house costs over the system life for installing, operating, and disposing, where quantifiable and when these costs may differ based on offers received.

(3) Any costs of conversion that can be stated in dollars, as well as other costs directly related to converting from installed to augmentation or replacement FIP resources. However, the costs associated with the following shall not be included:

(i) Conversion of existing software and data bases that are to be redesigned regardless of whether or not augmentation or replacement FIP resources are acquired.

(ii) Purging duplicate or obsolete software, data bases, and files.

(iii) Development of documentation for existing application software.

(iv) Improvements in management and operating procedures.

(b) When payments are expected to vary among the alternatives being considered, or where payments will be made over an extended period, agencies should adjust prices and costs to present value and apply the results in source selection. Agencies should follow the guidance in OMB Circular A-94 regarding present value calculations.

**§ 201-39.1501-2 Exception.**

Agencies are permitted to award on the

basis of the lowest offered purchase price when—

(a) The only acquisition method being solicited is purchase;

(b) The purchase price of each item being acquired does not exceed \$25,000; and

(c) The total purchase price of all of the FIP resources to be included in the contract does not exceed \$300,000.

**§ 201-39.1502 Solicitation.**

(a) The solicitation shall state the means of evaluating all acquisition methods included in the solicitation.

(b) If a present-value adjustment is to be used, the solicitation shall state the methodology and discount rate that will be applied in the evaluation process.

**§ 201-39.1503 Award.**

The contracting officer shall not award a contract providing for the delivery of outdated FIP equipment unless—

(a) The agency's DSO determines that such action will be in the Government's best interest; or

(b) A determination has been made in accordance with § 201-39.602 or § 201-39.1003.

**Subpart 201-39.16—[Reserved]**

**Subpart 201-39.17—Special  
Contracting Methods**

**§ 201-39.1700 Scope of subpart.**

This subpart prescribes policies and procedures for using options in acquiring FIP resources.

**§ 201-39.1701 Options.**

**§ 201-39.1701-1 General.**

The use of options may be appropriate in FIP resources acquisitions because—

(a) The FIRMR requires agencies to determine a system life for each FIP resource requirement and to evaluate costs over the system life;

(b) Funding is normally not available at the time of award for the entire system life; and

(c) Soliciting and evaluating optional quantities, optional contract periods, and optional FIP resources can be an effective method to achieve competition for the options and to prevent the possibility of a contractor "buying-in."

**§ 201-39.1701-2 Applicability.**

Except as set forth below, the policies and procedures of FAR subpart 17.2 shall apply to the acquisition of FIP resources, notwithstanding the language in FAR 17.200.

**§ 201-39.1701-3 Policy.**

Notwithstanding the language in FAR 17.202, a contract for FIP resources with options to extend the contract period of performance, or to acquire additional quantities or optional FIP resources may be used when—

(a) The Government has requirements for the acquisition of FIP resources extending beyond the basic contract period;

(b) Funds are not available for the entire system life, but a reasonable certainty exists that they will be available in the future; or

(c) Competition for the additional periods, quantities or optional FIP resources is impracticable once the contract is awarded.

**§ 201-39.1701-4 Contracts.**

Notwithstanding the language in FAR 17.204(e), the total of the basic and option periods for contracts not subject to the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), as amended, may exceed 5 years (see FAR 22.10). However, statutes applicable to various classes of contracts may place additional restrictions on the length of contracts.

**§ 201-39.1701-5 Documentation.**

Any justifications and approvals or determinations and findings required by subpart 201-39.6 or FAR part 6 shall specify both the basic requirement and all options.

**§ 201-39.1701-6 Evaluation.**

Notwithstanding the language in FAR 17.206, the contracting officer shall consider all options in the award evaluation.

**§ 201-39.1701-7 [Reserved]**

**§ 201-39.1701-8 Solicitation provision and contract clauses.**

In lieu of the solicitation provisions and contract clauses prescriptions set forth in FAR 17.208, the contracting officer shall insert the following in solicitations and contracts for FIP resources that contain options—

(a) A provision substantially the same as the provision at § 201-39.5202-4, Evaluation of Options - FIP Resources, in the solicitation;

(b) A clause substantially the same as the clause at FAR 52.217-6, Option for Increased Quantity, in the solicitation and contract; and

(c) A clause substantially the same as the clause at FAR 52.217-9, Option to Extend the Term of the Contract, in the solicitation and contract.

**Subparts 201-39.18 through 201-39.32 [Reserved]**

**Subpart 201-39.33—Protests, Disputes, and Appeals**

**§ 201-39.3300 Scope of subpart.**

This subpart prescribes policies and procedures applicable to protests concerning FIP resource acquisitions filed with the GSA Board of Contract Appeals (GSBCA).

**§ 201-39.3301 General.**

Under Public Law 98-369, as amended (40 U.S.C. 759(f)), the GSBCA is authorized to hear and decide protests by interested parties involving acquisitions of FIP resources by Federal agencies subject to section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759), including acquisitions subject to GSA delegations of procurement authority.

**§ 201-39.3302 Applicability.**

This subpart is applicable to all Federal agencies.

**§ 201-39.3303 Policy.**

All Federal agencies shall follow the GSBCA "Rules of Procedure" in 48 CFR chapter 61.

**§ 201-39.3304 Procedures.**

**§ 201-39.3304-1 Protest notice.**

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Within one working day after receiving a copy of the protest, the contracting officer shall give oral or written notice of the protest to: General Services Administration, Acquisition Reviews Division (KAA), 18th and F Streets, NW., Washington, DC 20405, telephone (202) 501-1566. If the protest involves an acquisition issued under a specific acquisition delegation of procurement authority (DPA), the DPA number shall be provided to GSA with the notice.

**§ 201-39.3304-2 GSA participation.**

In delegating procurement authority for FIP resources to Federal agencies, GSA has the right to intervention in any protest case involving any Federal agency.

**Subparts 201-39.34 through  
201-39.43—[Reserved]**

**Subpart 201-39.44—  
Subcontracting Policies and  
Procedures**

**§ 201-39.4400 Scope of subpart.**

This subpart prescribes policies and procedures applicable when subcontracting includes FIP resources.

**§ 201-39.4401 Policy.**

In addition to the policies and procedures set forth in FAR 44.202-2, the contracting officer responsible for consent shall make a written determination for the file that competition was obtained for FIP resources or that the absence of competition is properly justified.

**Subpart 201-39.45—Government  
Property**

**§ 201-39.4500 Scope of subpart.**

This subpart prescribes policies and procedures for providing Government FIP resources to contractors.

**§ 201-39.4501 Dedicated FIP equipment  
or software in FIP services contracts.**

**§ 201-39.4501-1 General.**

When an offeror proposes the dedicated use of FIP equipment or software in performing a FIP service, it means that the offeror is proposing to use that resource exclusively in providing that service. When this is the case, it can sometimes be more advantageous

to the Government to provide the FIP equipment or software to the offeror as Government-furnished property.

**§ 201-39.4501-2 Policy.**

When a solicitation requires or allows an offeror to propose the dedicated use of FIP equipment or software in performing a FIP service, the contracting officer shall ensure that the solicitation—

(a) Reserves the right for the Government to furnish the dedicated items to the offeror;

(b) Requires the offeror to price the use of the dedicated items on a specific line-item basis; and

(c) Requires the offeror to specify the interface requirements between the offeror's system and the dedicated items.

**Subpart 201-39.46—Quality  
Assurance**

**§ 201-39.4600 Scope of subpart.**

This subpart prescribes the use of a contract clause for limiting contractor liability for loss of or damage to property of the Government.

**§ 201-39.4601 Contract clause.**

The contracting officer shall insert the clause at § 201-39.5202-6, Warranty Exclusion and Limitation of Damages, in solicitations and contracts for FIP resources, unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

**Subparts 201-39.47 through  
201-39.51—[Reserved]**

**Subpart 201-39.52—Solicitation  
Provisions and Contract Clauses**

**§ 201-39.5200 Scope of subpart.**

This subpart—

(a) Gives instructions for using provisions and clauses in solicitations and contracts for FIP resources; and

(b) Sets forth the solicitation provisions and contract clauses prescribed by this part 201-39.

**§ 201-39.5201 [Reserved]**

**§ 201-39.5202 Texts of provisions and  
clauses.**

**§ 201-39.5202-1 FIRMR Applicability.**

As prescribed in § 201-39.101-3(c), insert a clause substantially the same as the following in solicitations and contracts:

**FIRMR APPLICABILITY (OCT 90 FIRMR)**

This solicitation/contract requires the use or delivery of Federal information processing resources but the agency has determined that FIRMR part 201-39 does not apply based on the exception set forth in § 201-39.101-3(b)

\*

(End of clause)

\* Insert the specific sub-paragraph number(s) of the applicable exception.

**§ 201-39.5202-2 Availability of the "Federal ADP and Telecommunications Standards Index."**

As prescribed in § 201-39.1002-4, insert the following provision in the solicitation:  
**AVAILABILITY OF THE "FEDERAL ADP AND TELECOMMUNICATIONS STANDARDS INDEX" (OCT 90 FIRMR)**

Copies of the "Federal ADP and Telecommunications Standards Index" can be purchased from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402.

(End of provision)

**§ 201-39.5202-3 Procurement authority.**

As prescribed in § 201-39.106-4, insert a clause substantially the same as the following in solicitations and contracts:

**PROCUREMENT AUTHORITY (OCT 90 FIRMR)**

This acquisition is being conducted under  
\* \_\_\_\_\_ delegation of GSA's exclusive procurement authority for FIP resources.

The specific GSA DPA case number is \_\_\_\_\_\*\*

(End of provision)

\* Insert one of the following phrases:

- (1) "the regulatory;"
- (2) "a specific agency;" or
- (3) "a specific acquisition."

\*\* Insert one of the following:

- (1) If the acquisition is being conducted under the regulatory delegation, insert "not applicable."
- (2) If the acquisition is being conducted under a specific agency delegation or a

specific acquisition delegation, insert the case number as provided in GSA's letter delegating the specific procurement authority (e.g., KMA-88-9999).

**§ 201-39.5202-4 Evaluation of options - FIP resources.**

As prescribed in § 201-39.1701-8(a), insert a provision substantially the same as the following in the solicitation:

**EVALUATION OF OPTIONS - FIP RESOURCES (OCT 90 FIRMR)**

(a) The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. These prices will be adjusted by the applicable discount factors shown in \_\_\_\_\_ of the solicitation. Evaluation of options will not obligate the Government to exercise the options. Offers containing any charges for failure to exercise any option will be rejected.

(b) Selection of an offer will be made on the basis of the most advantageous alternative to the Government provided that the contract prices reasonably represent the value of bona fide requirements for each fiscal year. This determination with respect to contract prices will be made after consideration of such factors as commercial or catalog prices for short-term leases, offeror system startup expenses, multiyear price protection, assured system life availability of equipment, software, and vendor support. If a determination is made that an offer does not meet these criteria, that offer cannot be accepted for award.

(End of provision)

\* Insert one of the following:

- (1) If a present-value adjustment is being used, indicate the location in the solicitation where any applicable discount factors and contemplated payment schedule are specified; or
- (2) If a present-value adjustment is not being used, insert "Not Applicable."

**§ 201-39.5202-5 Privacy or security safeguards.**

As prescribed in § 201-39.1001-3, insert a clause substantially the same as the following clause in solicitations and contracts:

**PRIVACY OR SECURITY SAFEGUARDS (OCT 90 FIRMR)**

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(a) The details of any safeguards the contractor may design or develop under this contract are the property of the Government and shall not be published or disclosed in any manner without the contracting officer's express written consent.

(b) The details of any safeguards that may be revealed to the contractor by the Government in the course of performance under this contract shall not be published or disclosed in any manner without the contracting officer's express written consent.

(c) The Government shall be afforded full, free, and uninhibited access to all facilities, installations, technical capabilities, operations, documentation, records, and data bases for the purpose of carrying out a program of inspection to ensure continued efficacy and efficiency of safeguards against threats and hazards to data security, integrity, and confidentiality.

(d) If new or unanticipated threats or hazards are discovered by either the Government or the contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party. Mutual agreement shall then be reached on changes or corrections to existing safeguards or institution of new safeguards, with final determination of appropriateness being made by the Government. The Government's liability is limited to an equitable adjustment of cost for such changes or corrections, and the Government shall not be liable for claims of loss of business, damage to reputation, or damages of any other kind arising from discovery of new or unanticipated threats or hazards, or any public or private disclosure thereof.

**§ 201-39.5202-1 FIRM R Applicability.**

As prescribed in § 201-39.101-3(c), insert a clause substantially the same as the following in solicitations and contracts:  
**FIRM R APPLICABILITY (OCT 90 FIRM R)**

This solicitation/contract requires the use or delivery of Federal information processing resources but the agency has determined that FIRM R part 201-39 does not apply based on the exception set forth in § 201-39.101-3(b)

\*

(End of clause)

\* Insert the specific sub-paragraph number(s) of the applicable exception.

**§ 201-39.5202-2 Availability of the  
"Federal ADP and Telecommunications  
Standards Index."**

As prescribed in § 201-39.1002-4, insert the following provision in the solicitation:

**AVAILABILITY OF THE "FEDERAL ADP  
AND TELECOMMUNICATIONS  
STANDARDS INDEX" (OCT 90 FIRM R)**

Copies of the "Federal ADP and Telecommunications Standards Index" can be purchased from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402.

(End of provision)

**§ 201-39.5202-3 Procurement authority.**

As prescribed in § 201-39.106-4, insert a clause substantially the same as the following in solicitations and contracts:

**PROCUREMENT AUTHORITY (OCT 90  
FIRM R)**

This acquisition is being conducted under

\* \_\_\_\_\_ delegation of GSA's exclusive

procurement authority for FIP resources.

The specific GSA DPA case number is \_\_\_\_\_\*\*

(End of provision)

\* Insert one of the following phrases:

- (1) "the regulatory;"
- (2) "a specific agency;" or
- (3) "a specific acquisition.

\*\* Insert one of the following:

- (1) If the acquisition is being conducted under the regulatory delegation, insert "not applicable."
- (2) If the acquisition is being conducted under a specific agency delegation or a specific acquisition delegation, insert the case number as provided in GSA's letter delegating the specific procurement authority (e.g., KMA-88-9999).

**§ 201-39.5202-4 Evaluation of options -  
FIP resources.**

As prescribed in § 201-39.1701-8(a), insert a provision substantially the same as the following in the solicitation:

**EVALUATION OF OPTIONS - FIP  
RESOURCES (OCT 90 FIRM R)**

(a) The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic

requirement. These prices will be adjusted by the applicable discount factors shown in \* of the solicitation. Evaluation of options will not obligate the Government to exercise the options. Offers containing any charges for failure to exercise any option will be rejected.

(b) Selection of an offer will be made on the basis of the most advantageous alternative to the Government provided that the contract prices reasonably represent the value of bona fide requirements for each fiscal year. This determination with respect to contract prices will be made after consideration of such factors as commercial or catalog prices for short-term leases, offeror system startup expenses, multiyear price protection, assured system life availability of equipment, software, and vendor support. If a determination is made that an offer does not meet these criteria, that offer cannot be accepted for award.

(End of provision)

\* Insert one of the following:

(1) If a present-value adjustment is being used, indicate the location in the solicitation where any applicable discount factors and contemplated payment schedule are specified; or

(2) If a present-value adjustment is not being used, insert "Not Applicable."

**§ 201-39.5202-5 Privacy or security safeguards.**

As prescribed in § 201-39.1001-3, insert a clause substantially the same as the following clause in solicitations and contracts:

**PRIVACY OR SECURITY SAFEGUARDS  
(OCT 90 FIRMR)**

(a) The details of any safeguards the contractor may design or develop under this contract are the property of the Government and shall not be published or disclosed in any manner without the contracting officer's express written consent.

(b) The details of any safeguards that may be revealed to the contractor by the Government in the course of performance under this contract shall not be published or disclosed in any manner without the contracting officer's express written consent.

(c) The Government shall be afforded full, free, and uninhibited access to all facilities, installations, technical capabilities, operations, documentation, records, and data bases for the purpose of carrying out a program of inspection to ensure continued

efficacy and efficiency of safeguards against threats and hazards to data security, integrity, and confidentiality.

(d) If new or unanticipated threats or hazards are discovered by either the Government or the contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party. Mutual agreement shall then be reached on changes or corrections to existing safeguards or institution of new safeguards, with final determination of appropriateness being made by the Government. The Government's liability is limited to an equitable adjustment of cost for such changes or corrections, and the Government shall not be liable for claims of loss of business, damage to reputation, or damages of any other kind arising from discovery of new or unanticipated threats or hazards, or any public or private disclosure thereof.

(End of clause)

**§ 201-39.5202-6 Warranty exclusion and limitation of damages.**

As prescribed in § 201-39.4601, insert the following clause in the solicitations and contracts.

**WARRANTY EXCLUSION AND  
LIMITATION OF DAMAGES (OCT 90  
FIRMR)**

Except as expressly set forth in writing in this agreement and except for the implied warranty of merchantability, there are no warranties expressed or implied.

In no event will the contractor be liable to the Government for consequential damages as defined in the Uniform Commercial Code, section 2-715, in effect in the District of Columbia as of January 1, 1973, i.e.—

Consequential damages resulting from the seller's breach include—

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(End of clause)

**Subpart 201-39.53—[Reserved]**

AMENDMENTS AND INTERIM RULES  
FIRMR

<u>Amendment Number</u>	<u>Date Signed</u>	<u>Title</u>
1	10/18/90	Implementation of the FIRMR Improvement Project
2	10/07/94	Amendment of Miscellaneous FIRMR Provisions
3	08/15/94	Amendment of FIRMR Provisions Relating to FIRMR Applicability, FIRMR Bulletins, and Present Value Analysis
4	01/19/95	Amendment of FIRMR to Remove Provisions for Using GSA Nonmandatory Schedule Contracts for FIP Resources

  

<u>Interim Rule Number</u>		
1	10/15/93	Mandatory requirement for agencies to purchase energy efficient computer equipment
2	10/11/94	Revises policies regarding delegations of procurement authority from GSA for the acquisition of Federal information processing (FIP)

